2. Appellees also assert that the class discriminated against by Section 3(e) is composed of persons "in need of food stamp relief, but who live in households that include one or more persons who are unrelated to everyone else in the household" (Appellees' Brief, at p. 12). This is not, however, an accurate description of the class of persons who fail to qualify for food stamps under Section 3(e).

First, if a person 60 years of age or older moves into or is a member of a related household that is otherwise eligible for food stamps, the household remains eligible even if that person is unrelated to any of the household's other members. 7 U.S.C. 2012(e); 7 C.F.R. 270.2(jj)(2). Also, a household is not ineligible if it is comprised of two unrelated people living together, one of whom is 60 years of age or older. 7 C.F.R. 270.2(jj)[15].

Second, if the person or persons moving into a related household are under 18 years of age, the household will continue to be considered as an eligible household under Section 3(e) regardless of the fact that the children are unrelated or not legally adopted so long as one of the adult members of the household "acts in loco parentis to such children," that is, performs the duties of a parent.[16]

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[15] Similarly, if a household is composed of a number of persons, only one of whom is under 60 years of age, it is not ineligible, even if none of the persons is related. *Ibid.*

[16] 7 C.F.R. 270.2(rr), 270.2(kk). Thus, if Sharon Sharp, who moved in with appellee Hejny, had been under 18 years of age (she is now 21), this may not have rendered the Hejny's ineligible for food stamps. See App. 28–31.

Also, if a man and woman are living together they shall be considered related for the purposes of Section 3(e) even if they are not legally married so long as they are considered as husband and wife "by the community in which they live." [17]

Moreover, even if a group of unrelated persons living together does not come within any of the specific examples above, it does not follow that such persons are ineligible for food stamps as an unrelated household. In the recent case of *Knowles* v. *Butz*, No. C-72-1578, decided February 23, 1973 (N.D. Calif.),[18] the court held that even if persons share living quarters and the expenses thereof, they are not necessarily one "household" under Section 3(e) since such persons may not comprise a single "economic unit" [19] as Section 3(e) requires. Thus, to take the most simple example, if two unrelated persons, who are receiving food stamps while living apart, decide to live together in the same house or apartment and to share housing expenses in order to economize, they could remain eligible for food stamps as separate households (rather

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[17] 7 C.F.R. 270.2(rr).

[18] This opinion of the district court is included as an Appendix to this Reply Brief.

[19] Section 3(e), 7 U.S.C. 2012(e), provides in pertinent part: "The term 'household' shall mean a group of related individuals * * * who * * * are living as one economic unit * * *." In its instructions to the State agencies administering the Food Stamp Program, the Department of Agriculture's Food and Nutrition Service (FNS) defines "economic unit" as meaning that "the common living expenses are shared from the income and resources of all members and that the basic needs of all members are provided for without regard to their ability or willingness to contribute." [FNS Instruction 732-1, § III(D)(1)(d).]

than as one unrelated household) so long as they do not otherwise pool their resources.[20] See *Knowles* v. *Butz, supra* (App., *infra,* at p. 18).

The Department of Agriculture has accepted the ruling in *Knowles.*[21] It is not clear how many, if any, of the households represented by the individual appellees in this case would now qualify for food stamps in light of the *Knowles* decision. It appears, however, that with minor adjustments all of them might be able to become eligible as separate households,[22] with the possible exception of the unrelated group composed of appellees Gaddy, Jirel, Hoffman, Small and McElyea, who allege that they "share all expenses," consider themselves as one family, live together out of affinity for one another and apparently desire to continue doing so (App. 40). The result would thus approach that suggested in a Resolution sponsored by a number of Senators,[23] and discussed in appellees' brief, at

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[20] Thus, as an analogy, two lawyers sharing an office suite and expenses, are not thereby made partners.

[21] *Knowles* was a class action and the court issued a permanent injunction preventing the Secretary "from refusing to provide Food Stamps to any person for the reason that all persons with whom they share living quarters and share the expenses for such quarters must be considered a single 'household' for purposes of the Food Stamp Program" (App., *infra,* p. 20). The government will not appeal regarding the decision as applicable only to sharing expenses for housing.

[22] The unrelated individual might comprise one household and the related individuals comprise another, while both continued living in the same house and sharing the expenses therefor.

[23] 117 Cong. Rec. 14025–14028 (1971) (the Resolution was sponsored by Senators McGovern, Cranston, Kennedy, Hart, Mondale,

pp. 19–20 n. 9; the Resolution, while expressing no disagreement with Section 3(e) insofar as it denies "food stamp eligibility to unrelated individuals only," proposed that some of its impact be lessened by regulations expanding the definition of "related" or by treating related members of an unrelated group as a separate household. 117 Cong. Rec. 14027 (1971).

3. We also note that even aside from Section 3(e), the joining together of two eligible households may render the resulting, consolidated household ineligible for food stamps. Take, for example, two persons living apart, both receiving food stamps and both earning $170 per month; if they decide to live together and pool resources for all expenses their combined income of $340 per month would exceed the $233 maximum allowable income for a household of two people.[24] Also, if one of the adult members of

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Nelson, Hollings, Magnuson, Hartke, Ribicoff, Church, Bayh, Humphrey, Pastore, Tunney, McGee, Muskie, Eagleton, Brooke, Fulbright, Randolph, Gravel, Harris, Hughes and Williams).

[24] For 48 States and the District of Columbia, the maximum allowable monthly net food stamp income standards provide (FNS Instruction 732–1, Exhibit B):

Household Size:	*Maximum Allowable Income*
1	$178
2	233
3	307
4	373
5	440
6	507
7	573
8	640
Each additional member	+53

the consolidated household refuses to register for or accept employment, this disqualifies the entire household even if none of the members of one of the formerly separate households so refuses. 7 U.S.C. 2014(c).

Of course, persons may seek to adjust their living arrangements in light of such provisions. But as we argued in our main brief, at pp. 9–12, neither these provisions nor Section 3(e), which is at issue here, directly infringes upon any of appellees' fundamental constitutional rights so that the "compelling justification" standard of judicial review would be appropriate. See, in addition to the cases cited in our main brief, *San Antonio School District* v. *Rodriguez, No.* 71–1332, decided March 21, 1973, slip op. at pp. 29–30, 33.

Respectfully submitted.

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APRIL 1973.

APPENDIX

United States District Court for the Northern District of California

No. C–72–1578 AJZ

KAREN KNOWLES, ET AL., PLAINTIFFS

v.

EARL L. BUTZ, ET AL., DEFENDANTS

MEMORANDUM OPINION AND ORDER

Initially two food stamp applicants, the California Welfare Rights Organization (CWRO), and the President of CWRO brought this suit seeking a declaratory judgment that a federal administrative provision dealing with the Food Stamp Program, 7 U.S.C. Chapter 51, is invalid and injunctive relief prohibiting the enforcement of the provision. The challenged regulation, Food and Nutrition Service (FNS) Instruction 732–1, § III(D)(2)(b), provides that persons who share common living quarters and share the expense for such quarters shall be considered a "household" for Food Stamp Program purposes.[1] As a result, if any contenant is ineligible for food stamps,

[1] Plaintiffs argue that the same directive is also contained in 7 C.F.R. § 271.3(a). Defendants claim that § 271.3(a) only provides a rebuttable presumption that all who reside in common living quarters shall be considered a "household," and that FNS Instruction 732–1, § III(D)(2)(b) alone conclusively provides that all who share living quarters and the expense wherefor shall be considered a "household." Because the result is the same in either case, the court need not consider whether the challenged rule stems from only one or both of the regulations.

all of the contenents are made ineligible. *See* 7 C.F.R. § 271.3.

The court granted a temporary restraining order on August 31, 1972, and a preliminary injunction on November 2, 1972, prohibiting defendants from refusing to grant the two named food stamp-applicant plaintiffs such food stamps as they would be entitled to receive were it not for the challenged provision. In its order granting a preliminary injunction, the court certified the action as a proper one to be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. At that time the court also explained that, in its opinion, plaintiffs are clearly correct concerning the merits of their claim. Thereafter the parties filed cross-motions for summary judgment without submitting any additional legal argument or affidavits. On November 16, 1972, the court denied both motions, because it was uncertain whether any person presently being denied welfare benefits joined in the motion.

Several motions are now before the court: (1) motion to intervene of two members of the present class; (2) motion to intervene of two persons whose food stamp benefits were decreased, but not terminated, as a result of the challenged regulation; (3) motion to grant summary judgment on behalf of the original class; (4) motion to enter default judgment on behalf of the original class against Secretary Butz; (5) motion to grant a preliminary injunction on behalf of persons whose benefits are reduced, but not terminated.

1. Motions Concerning Present Class Members:

Two members of the present class seek to intervene, apparently because the initial food stamp-applicant plaintiffs are no longer eligible for food stamp bene-

fits. The fact that the individual claims of the named plaintiffs are moot does not moot the class action portion of a lawsuit when, as in the present case, the controversy continues as to other members of the class. *See Quevedo* v. *Collins,* 414 F. 2d 796, 797 (5th Cir. 1969); *Crow* v. *California Dept. of Human Resources,* 325 F. Supp. 1314, 1316 (N.D. Cal. 1970), *cert. denied,* 408 U.S. 924 (1972). There is, therefore, no need for these new class members to formally intervene. Instead, the court will permit them to enter an appearance through counsel and participate as class members. This eliminates the delay that might otherwise be required before the court could enter summary judgment on behalf of the class members. *See* Fed. R. Civ. P. 56(a).

The initial class members now move that the court enter judgment by default against Secretary Butz. The clerk entered default against this defendant on January 23, 1973. Secretary Butz has since asked that the entry of default be vacated, but he still has tendered no answer to the complaint, offered any excuse for not doing so, or suggested when he might file an answer. Nor has the Secretary suggested any defense he might wish to raise in his answer. The court will, therefore, proceed to consider whether judgment by default should be entered pursuant to Rule 55(e) of the Federal Rules of Civil Procedure. Because the issue is substantially the same, the court will simultaneously consider whether summary judgment should be entered against Charles Ernst, the remaining federal defendant.

Plaintiffs attack the validity of FNS Instruction 732–1, § III(D)(2)(b) on the ground that the regulation is inconsistent with the Food Stamp Program statutory provisions. This regulation was promulgated by the Secretary of Agriculture pursuant to the ex-

press provisions of 7 U.S.C. §§ 2013 (a) and (c), which provide:

> (a) The Secretary is authorized to formulate and administer a food stamp program under which . . . eligible households * * * shall be provided with an opportunity to obtain a nutritionally adequate diet through the issuance to them of a coupon allotment which shall have a greater monetary value than the charge to be paid for such allotment by eligible households * * *
>
> (c) The Secretary shall issue such regulations, not inconsistent with this chapter, as he deems necessary or appropriate for the effective and efficient administration of the food stamp program.

This Court, as it must, shows great deference to the interpretation given a statute by an agency charged with its administration. *See Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). But in this particular case, there is little that the Secretary may properly interpret, because in § 2012(e) the statute provides a definition of the term "household." Thus, the Secretary's rule-making power is limited in this case, despite the express statutory authorization.

> The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.

Manhattan Gen. Equip. Co. v. *Commissioner,* 297 U.S. 129, 134 (1936).

The statutory definition of "household," 7 U.S.C. § 2012(e), as modified by *Moreno* v. *USDA,* 345 F. Supp. 310 (D.D.C. 1972) (three-judge court), *prob. juris. noted,* 41 U.S.L.W. 3312 (S. Ct. Dec. 5, 1972), provides:

> The term household shall mean a group of * * * individuals who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common.

Notably, the statute contains no suggestion that all persons who share living quarters and share expenses for such quarters shall *per se* be considered a "household." Defendants, however, claim that all persons who share living quarters and share expenses for such quarters constitute an "economic unit," and for that reason, they must be considered a "household."

Although the term "economic unit" is used in the statutory definition of "household," it is nowhere itself defined in the statute. The term is, however, defined by the regulations; FNS Instruction 732–1, § III(D)(1)(d) provides:

> *Economic units* means that the common living expenses are shared from the income and resources of all members and that the basic needs of all members are provided for without regard to their ability or willingness to contribute.

There can be no doubt that this is a proper regulation for the Secretary to promulgate pursuant to 7 U.S.C. §§ 2013 (a) and (d). It appears to be a full and fair attempt to interpret in a commonsense manner what

Congress probably meant by the term. Under this definition, however, not all who share living quarters and share the expenses for such quarters are an "economic unit," which is what defendants contend; rather, the sharing of living quarters and the expenses for them would be but one factual datum to be considered. Those who do not share income and other resources with their cotenants and who do not share any expenses except the expense of housing probably could not constitute an "economic unit" together with their cotenants under this definition. Certainly the definition does not support any *per se* rule that they would.

There is a second reason why defendants' argument is untenable: even if plaintiffs did constitute an "economic unit" together with their cotenants, the express terms of the statutory definition of "household" preclude the defendants from considering every group that is an "economic unit" to be *per se* a "household." Section 2012(e) provides that a "household" is a group: "[1] living as one economic unit [2] sharing common cooking facilities and [3] for whom food is customarily purchased in common." Thus, in no case can a group be a "household," even if it is an "economic unit," unless it shares cooking facilities and customarily purchases food in common.

The court, therefore, concludes that the members of the present class are entitled to the entry of a judgment by default against Secretary Butz and summary judgment against the remaining federal defendant.

2. Motions Concerning Prospective Intervenors:

Two individuals, whose benefits are not denied, but only reduced, because they and their cotenants are considered a "household" as a result of the challenged regulation, seek to intervene, represent the class of all persons similarly situated, and obtain declaratory

and injunctive relief against defendants. Because their claim is so nearly identical to the claim of the present class of plaintiffs, the motion will be granted.

The motion for a preliminary injunction will also be granted. In 7 U.S.C. § 2011 Congress explains the problem the Food Stamp Program is intended to alleviate:

> The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households * * *. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade.

Now that the legal issue of the regulation's validity has been resolved, there is no reason why, contrary to congressional intent, intervenors should be denied an adequate diet until the time that they, too, may file a motion for summary judgment.

Finally, for the reasons stated in the order granting temporary injunction, the court certifies that the action brought by these intervenors is a proper one to be maintained as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

In conformity with the foregoing opinion, which constitutes the court's findings of fact and conclusions of law,

IT IS HEREBY ORDERED that:

(1) Defendants and all persons acting by, through, or under them, are permanently enjoined from refusing to provide Food Stamps to any person for the reason that all persons with whom they share living quarters and share the expenses for such quarters must be considered a single "household" for purposes of the Food Stamp Program;

(2) Defendants shall forthwith issue instructions to all participating state governments that no person shall be denied Food Stamps for the reason that all persons with whom they share living quarters and share the expenses for such quarters must be considered a single "household" for purposes of the Food Stamp Program;

(3) FNS Instruction 732–1, § III(D)(2)(b), and any and all other regulations which have the effect of requiring that all persons who share living quarters and the expenses for such quarters must be considered a single "household" for purposes of the Food Stamp Program are declared to be contrary to 7 U.S.C. § 2012(e), and therefore void;

(4) Defendants and all persons acting by, through, or under them, are preliminarily enjoined from refusing to give persons the full amount of Food Stamps which they would otherwise be eligible to receive for the reason that all persons with whom they share living quarters and share the expenses for such quarters must be considered a single "household" for purposes of the Food Stamp Program;

(5) Defendants shall forthwith issue instructions to all participating state governments that pending the outcome of this lawsuit they shall not deny persons the full amount of Food Stamps they would otherwise be entitled to receive for the reason that all persons with whom they share living quarters and share the expenses for such quarters must be considered a single "household" for purposes of the Food Stamp Program.

Dated: February 23, 1973

ALFONSO J. ZIRPOLI,
United States District Judge.

U.S. GOVERNMENT PRINTING OFFICE: 1973

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES DEPARTMENT OF AGRICULTURE ET AL. *v.* MORENO ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 72–534. Argued April 23, 1973—Decided June 25, 1973

Section 3 (e) of the Food Stamp Act of 1964, as amended, generally excludes from participation in the food stamp program any household containing an individual who is unrelated to any other household member. The Secretary of Agriculture issued regulations thereunder rendering ineligible for participation in the program any "household" whose members are not "all related to each other." Congress stated that the purposes of the Act were "to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households . . . [and] that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution . . . of our agricultural abundance and will strengthen our agricultural economy . . . ." The District Court held that the "unrelated person" provision of § 3 (e) creates an irrational classification in violation of the equal protection component of the Due Process Clause of the Fifth Amendment. *Held:* The legislative classification here involved cannot be sustained, the classification being clearly irrelevant to the stated purposes of the Act and not rationally furthering any other legitimate governmental interest. In practical operation, the Act excludes not those who are "likely to abuse the program" but, rather, only those who so desperately need aid that they cannot even afford to alter their living arrangements so as to retain their eligibility. Pp. 5–10. 345 F. Supp. 310, affirmed.

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, STEWART, WHITE, MARSHALL, BLACKMUN, and POWELL, JJ., joined. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., joined.

SUPREME COURT OF THE UNITED STATES

No. 72-534

United States Department of Agriculture et al., Appellants, *v.* Jacinta Moreno et al.

On Appeal from the United States District Court for the District of Columbia.

[June 25, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case requires us to consider the constitutionality of § 3 (e) of the Food Stamp Act of 1964, 7 U. S. C. § 2012 (e), as amended, 84 Stat. 2048, which, with certain exceptions, excludes from participation in the food stamp program any household containing an individual who is unrelated to any other member of the household. In practical effect, § 3 (e) creates two classes of persons for food stamp purposes: one class is composed of those individuals who live in households all of whose members are related to one another, and the other class consists of those individuals who live in households containing one or more members who are unrelated to the rest. The latter class of persons is denied federal food assistance. A three-judge district court for the District of Columbia held this classification invalid as violative of the Due Process Clause of the Fifth Amendment. 345 F. Supp. 310 (1972). We noted probable jurisdiction. 409 U. S. 1036 (1972). We affirm.

I

The federal food stamp program was established in 1964 in an effort to alleviate hunger and malnutrition among the more needy segments of our society. 7 U. S. C. § 2011. Eligibility for participation in the program is determined on a household rather than an individual basis. 7 CFR § 271.3 (a). An eligible household purchases sufficient food stamps to provide that household with a nutritionally adequate diet. The household pays for the stamps at a reduced rate based upon its size and cumulative income. The food stamps are then used to purchase food at retail stores, and the Government redeems the stamps at face value, thereby paying the difference between the actual cost of the food and the amount paid by the household for the stamps. See 7 U. S. C. §§ 2013 (a), 2016, 2025 (a).

As initially enacted, § 3 (e) defined as a "household" "a group of *related or non-related* individuals, who are not residents of an institution or a boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." [1] In January 1971, however, Congress redefined the term "household" so as to include only groups of *related* individuals.[2] Pursuant to this amendment, the

[1] 78 Stat. 703 (emphasis added). The act provided further that "[t]he term 'household' shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption." *Ibid.*

[2] 84 Stat. 2048. The 1971 amendment did not affect certain groups of nonrelated individuals over 60 years of age. As amended, § 3 (e) now provides:

"The term 'household' shall mean a group of related individuals (including legally adopted children and legally assigned foster children) or non-related individuals over age 60 who are not residents of an institution or boarding house, but are living as one economic

Secretary of Agriculture promulgated regulations rendering ineligible for participation in the program any "household" whose members are not "all related to each other." [3]

Appellees in this case consist of several groups of individuals who allege that, although they satisfy the income eligibility requirements for federal food assistance, they have nevertheless been excluded from the program solely because the persons in each group are not "all related to each other." Appellee Jacinta Moreno, for example, is a 56-year-old diabetic who lives with Ermina Sanchez and the latter's three children. They share common living expenses, and Mrs. Sanchez helps to care for appellee. Appellee's monthly income, derived from public assistance, is $75; Mrs. Sanchez receives $133 per

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unit sharing common cooking facilities and for whom food is customarily purchased in common. The term 'household' shall also mean (1) a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption, or (2) an elderly person who meets the requirements of section 2019 (h) of this title."

[3] 7 CFR § 270.2 (jj) provides:

"(jj) 'Household' means a group of persons, excluding roomers, boarders, and unrelated live-in attendants necessary for medical, housekeeping, or child care reasons, who are not residents of an institution or boarding house, and who are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common: *Provided*, That:

"(1) When all persons in the group are under 60 years of age, they are all related to each other; and

"(2) When more than one of the persons in the group is under 60 years of age, and one or more other persons in the group is 60 years of age or older, each of the persons under 60 years of age is related to each other or to at least one of the persons who is 60 years of age or older. It shall also mean (i) a single individual living alone who purchases and prepares food for home consumption, or (ii) an elderly person as defined in this section, and his spouse."

month from public assistance. The household pays $135 per month for rent, gas, and electricity, of which appellee pays $50. Appellee spends $10 per month for transportation to a hospital for regular visits, and $5 per month for laundry. That leaves her $10 per month for food and other necessities. Despite her poverty, appellee has been denied federal food assistance solely because she is unrelated to the other members of her household. Moreover, although Mrs. Sanchez and her three children were permitted to purchase $108 worth of food stamps per month for $18, their participation in the program will be terminated if appellee Moreno continues to live with them.

Appellee Sheilah Hejny is married and has three children. Although the Hejnys are indigent, they took in a 20-year-old girl, who is unrelated to them, because "we felt she had emotional problems." The Hejnys receive $144 worth of food stamps each month for $14. If they allow the 20-year-old girl to continue to live with them, they will be denied food stamps by reason of § 3 (e).

Appellee Victoria Keppler has a daughter with an acute hearing deficiency. The daughter requires special instruction in a school for the deaf. The school is located in an area in which appellee could not ordinarily afford to live. Thus, in order to make the most of her limited resources, appellee agreed to share an apartment near the school with a woman who, like appellee, is on public assistance. Since appellee is not related to the woman, appellee's food stamps will be cut off if they continue to live together.

These and two other groups of appellees instituted a class action against the Department of Agriculture, its Secretary and two other departmental officials, seeking declaratory and injunctive relief against the enforcement of the 1971 amendment of § 3 (e) and its implementing

regulations. In essence, appellees contend,[4] and the District Court held, that the "unrelated person" provision of § 3 (e) creates an irrational classification in violation of the equal protection component of the Due Process Clause of the Fifth Amendment.[5] We agree.

II

Under "traditional" equal protection analysis, a legislative classification must be sustained if the classification itself is rationally related to a legitimate governmental interest. See *Jefferson* v. *Hackney*, 406 U. S. 535, 546 (1972); *Richardson* v. *Belcher*, 404 U. S. 78, 81 (1971); *Dandridge* v. *Williams*, 397 U. S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U. S. 420, 426 (1961). The purposes of the Food Stamp Act were expressly set forth in the congressional "declaration of policy":

> "It is hereby declared to be the policy of Congress . . . to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and

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[4] Appellees also argued that the regulations were themselves invalid because beyond the scope of the authority conferred upon the Secretary by the statute. The District Court rejected that contention, and appellees have not pressed that argument on appeal. Moreover, appellees did not challenge the constitutionality of the statute's reliance on "households" rather than "individuals" as the basic unit of the Food Stamp Program. We therefore intimate no view on that question.

[5] "[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" *Schneider* v. *Rusk*, 377 U. S. 163, 168 (1964); see *Frontiero* v. *Richardson*, — U. S. —, — n. 5 (1973); *Shapiro* v. *Thompson*, 394 U. S. 618, 641–642 (1969); *Bolling* v. *Sharpe*, 347 U. S. 497 (1954).

> malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to purchase a nutritionally adequate diet through normal channels of trade." 7 U. S. C. § 2011.

The challenged statutory classification (households of related persons versus households containing one or more unrelated persons) is clearly irrelevant to the stated purposes of the Act. As the District Court recognized, "[t]he relationships among persons constituting one economic unit and sharing cooking facilities have nothing to do with their abilities to stimulate the agricultural economy by purchasing farm surpluses, or with their personal nutritional requirements." 345 F. Supp., at 313.

Thus, if it is to be sustained, the challenged classification must rationally further some legitimate governmental interest other than those specifically stated in the congressional "declaration of policy." Regrettably, there is little legislative history to illuminate the purposes of the 1971 amendment of § 3 (e).* The legislative history that does exist, however, indicates that that amendment was intended to prevent so-called "hippies" and "hippie communes" from participating in the food stamp program. See H. R. Rep. No. 91–1793, 91st Cong.,

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* Indeed, the amendment first materialised, bare of committee consideration, during a conference committee's consideration of differing House and Senate bills.

2d Sess., 8 (1970); 116 Cong. Rec. 44439 (1970) (Sen. Holland). The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest. As a result, "[a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the 1971 amendment." 345 F. Supp., at 314 n. 11.

Although apparently conceding this point, the Government maintains that the challenged classification should nevertheless be upheld as rationally related to the clearly legitimate governmental interest in minimizing fraud in the administration of the food stamp program.[7] In essence, the Government contends that, in adopting the 1971 amendment, Congress might rationally have thought (1) that households with one or more unrelated members are more likely than "fully related" households to

[7] The Government initially argued to the District Court that the challenged classification might be justified as a means to foster "morality." In rejecting that contention, the District Court noted that "interpreting the amendment as an attempt to regulate morality would raise serious constitutional questions." 345 F. Supp., at 314. Indeed, citing this Court's decisions in *Griswold* v. *Connecticut*, 381 U. S. 479 (1965), *Stanley* v. *Georgia*, 394 U. S. 557 (1969), and *Eisenstadt* v. *Baird*, 405 U. S. 438 (1972), the District Court observed that it was doubtful, at best, whether Congress, "in the name of morality," could "infringe the rights to privacy and freedom of association *in the home*." *Ibid.* (Emphasis in original.) Moreover, the court also pointed out that the classification established in § 3 (e) was not rationally related "to prevailing notions of morality, since it in terms disqualifies all households of unrelated individuals, without reference to whether a particular group contains both sexes." *Id.*, at 315. The Government itself has now abandoned the "morality" argument. See Brief for Appellant 9.

contain individuals who abuse the program by fraudulently failing to report sources of income or by voluntarily remaining poor; and (2) that such households are "relatively unstable," thereby increasing the difficulty of detecting such abuses. But even if we were to accept as rational the Government's wholly unsubstantiated assumptions concerning the differences between "related" and "unrelated" households, we still could not agree with the Government's conclusion that the denial of essential federal food assistance to *all* otherwise eligible households containing unrelated members constitutes a rational effort to deal with these concerns.

At the outset, it is important to note that the Food Stamp Act itself contains provisions, wholly independent of § 3 (e), aimed specifically at the problems of fraud and of the voluntarily poor. For example, with certain exceptions, § 5 (c) of the Act, 7 U. S. C. § 2014 (c), renders ineligible for assistance any household containing "an able-bodied adult person between the ages of eighteen and sixty-five" who fails to register for, and accept, offered employment. Similarly, §§ 14 (b) and (c), 7 U. S. C. §§ 2023 (b), (c), specifically impose strict criminal penalties upon any individual who obtains or uses food stamps fraudulently.[8] The existence of these pro-

[8] 7 U. S. C. §§ 2023 (b) and (c) provide:

"(b) Whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization to purchase cards in any manner not authorized by this [Act] or the regulations issued pursuant to this [Act] shall, if such coupons or authorization to purchase cards are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years or both, or, if such coupons or authorization to purchase cards are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not mose than one year, or both.

"(c) Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the

visions necessarily casts considerable doubt upon the proposition that the 1971 amendment could rationally have been intended to prevent those very same abuses. See *Eisenstadt* v. *Baird*, 405 U. S. 438, 452 (1972); cf. *Dunn* v. *Blumstein*, 405 U. S. 330, 353–354 (1972).

Moreover, in practical effect, the challenged classification simply does not operate so as rationally to further the prevention of fraud. As previously noted, § 3 (e) defines as an eligible "household" "a group of related individuals . . . [1] living as one economic unit [2] sharing common cooking facilities [and 3] for whom food is customarily purchased in common." Thus, two *unrelated* persons living together and meeting all three of these conditions would constitute a single household ineligible for assistance. If financially feasible, however, these same two individuals can legally avoid the "unrelated person" exclusion simply by altering their living arrangements so as to eliminate any one of the three conditions. By so doing, they effectively create two separate "households," both of which are eligible for assistance. See *Knowles* v. *Butz*, — F. Supp. — (ND Calif. 1973). Indeed, as the California Director of Social Welfare has explained: [9]

> "The 'related household' limitations will eliminate many households from eligibility in the Food Stamp Program. It is my understanding that the Congressional intent of the new regulations are specifically aimed at the 'hippies' and 'hippie communes.'

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same to have been received, transferred, or used in any manner in violation of the provisions of this [Act] or the regulations issued pursuant to the [Act] shall be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons are of a value less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both."

[9] Appendix 43.